

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LEONARD M. TAYLOR,	§
	§ No. 333, 2011
Defendant Below,	§
Appellant,	§ Court Below – Superior Court
	§ of the State of Delaware,
v.	§ in and for New Castle County
	§ Cr. I.D. 0907019543A
STATE OF DELAWARE,	§ Cr. A. Nos. IN-09-08-1815,
	§ IN-09-08-1816
Plaintiff Below,	§
Appellee.	§

Submitted: March 21, 2012

Decided: April 17, 2012

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices.

O R D E R

This 17th day of April 2012, it appears to the Court that:

1) Following a jury trial in the Superior Court, the defendant-appellant, Leonard M. Taylor (“Taylor”), was convicted of Murder in the First Degree and Possession of a Firearm During the Commission of a Felony. Taylor was sentenced to be incarcerated for life, without parole, for the murder. He was sentenced to an additional five years of incarceration for the weapons offense.

2) Taylor raises two arguments in this direct appeal. First, Taylor contends that the trial judge erred when he denied his motion for a mistrial due to the prejudicial statements of one of the State’s key witnesses, Ricardo

Rimpal (“Rimpal”). According to Taylor, the State’s improper comments and questions during the direct examination of Rimpal elicited testimony that prejudicially affected his right to a fair trial. Taylor’s trial counsel objected to Rimpal’s remarks and moved for a mistrial. Taylor argues that the trial judge’s instruction to the jury was not sufficient to cure any prejudice and that he is entitled to a new trial. Second, Taylor submits that the trial judge erred when he denied a defense motion to exclude statements made by Taylor to Eric Briggs (“Briggs”). According to Taylor, the statements to Briggs were obtained in violation of his right to due process under the Delaware Constitution. We have concluded that both of Taylor’s arguments are without merit. Therefore, the judgments of the Superior Court are affirmed.

3) On May 4, 2009, a body was found in a wooded area in Carney Point, New Jersey, shot three times in the head. The victim had trash bags over his head and legs and did not have any identification on his person when he was discovered. The victim was later identified by fingerprints as Sven Hinds (“Hinds”).¹

4) In late January 2009, Hinds along with two associates, Dharrion Newton (“Newton”) and Rimpal, migrated from the State of New York to

¹ The factual recitations in this Order are taken directly from Taylor’s Opening Brief.

the Delaware area to pursue a clothing line and t-shirt business. The t-shirt business was primarily a front for the real purpose of illegal narcotic sales. The fourth member of this drug sales operation was Taylor, who provided clientele for the drug operation as well as access to heroin, while Hinds had several contacts for cocaine. The “business” was conducted in both the State of Delaware and the State of Maryland.

5) The four business associates spent a great deal of time in different hotels in the Newark area, from which they were able to both create and sell t-shirts along with engage in the sale of narcotics. The police were able to determine that Taylor had rented several vehicles from American Auto Rental, which was located in Edgewood, Maryland. Specifically, from April 7, 2009 through May 5, 2009, Taylor had rented a 2006 Toyota Avalon. The rented Avalon was equipped with a GPS unit which had a daily self-check device that allowed the business owner of the vehicle to be able to locate the vehicle on a daily basis. On May 2, 2009 and May 3, 2009, the 2006 Avalon was located at a shopping center in Newark, Delaware. Located next to that shopping center was a Super Eight Motel at 268 East Main Street, Newark, Delaware.

6) Business records from the Super Eight Motel revealed that Taylor had rented two rooms at the motel from April 17, 2009 through May

6, 2009, specifically rooms 219 and 115. The Newark Police Department executed a search warrant on Room 219, where several blood stains were found on the carpet and the carpet padding in the center of the room. A DNA analysis was completed on the blood sample contained in the carpet from Room 219, and was matched to Hinds, the victim.

7) Throughout the investigation, which included several police agencies in three different states, there was no physical evidence to identify who murdered Hinds. The murder weapon was never located, there was no DNA evidence that identified the perpetrator or perpetrators, and there was no identifying fingerprint evidence to link to the individual or individuals who murdered Hinds.

8) Believing that the murder was not random or committed in the course of a robbery, the police theorized that the murder was committed by someone who knew and associated with Hinds and had a motive to commit the murder. The police were ready to focus their investigation on identifying a person who met those criteria.

9) As a result, the investigation focused on interviewing Hinds' business associates as well as other people who spent time with Hinds' business associates. Newton and Rimpal were both interviewed several times and each gave several contradictory versions to the police as to what

occurred on the evening of May 2, 2009, and who was involved. Newton and Rimpal both lied to the police numerous times in their statements to law enforcement and routinely explained that the basis for their lies was fear of retaliation from Taylor and or Hinds and their associates and families. However, the one feature common to all of their respective statements prior to trial was that Taylor was the person in Room 219 on May 2, 2009, and that when they (Rimpal and Newton) arrived in the room that evening, Hinds was lying dead on the floor.

10) The trial began on January 10, 2011. One of the State's key witnesses was Rimpal, who testified that on the night of the murder, he received a phone call from Taylor asking for Rimpal to purchase a few items from Wal-Mart. Those items included latex gloves, peroxide, and a container/storage bin, and were all commonly used as part of the t-shirt business. Rimpal was with Sheena Testerman ("Testerman") at the time of the phone call and trip to Wal-Mart. She testified consistently with Rimpal regarding the products purchased at Wal-Mart. Rimpal testified that he drove from the Wal-Mart to the Super Eight motel with Testerman. As they exited the vehicle, Testerman went to the first floor motel room and Rimpal proceeded upstairs. Rimpal testified as he entered the upstairs motel room, Newton and Taylor were in the room and he did not see Hinds. However, as

he entered the room he saw Hinds' feet between the two beds on the floor. Rimpal testified that he saw a small pistol tucked in Taylor's waistband and then later saw Hinds with a gunshot in his temple.

11) During his testimony, Rimpal acknowledged that in prior interviews with law enforcement he was not truthful and also minimized his involvement in the murder of Hinds. He explained the basis for his actions was that he was afraid of the repercussions from back where he lived. Rimpal further testified before the jury, over objection by Taylor's trial counsel, that the basis for his fear was that he had been assaulted on a couple of occasions, insinuating Taylor had something to do with these assaults. Trial counsel for Taylor objected at sidebar and asked for a mistrial due to the clear implication, made by Rimpal, that Rimpal was assaulted three times and Taylor had something to do with it. The trial judge denied the motion for mistrial and instead gave the jury a curative instruction.

12) Rimpal also provided the State with information regarding motive. Rimpal testified that Taylor and Hinds dealt with each other and often engaged in mutual childish "hazing." Rimpal also testified that Hinds ordered him to do nasty things to Taylor's mother. In furtherance of Rimpal's desire to create a motive for the State, he testified how he informed Taylor of Hind's instructions regarding threatening Taylor's mother and

destroying Taylor's father's property. Rimpal also told the jury that Taylor was aware that Hinds did not like him and Taylor was putting up a front and dealing with it. Rimpal was not arrested or charged for anything in connection with the murder of Hinds.

13) Newton testified for the State regarding his recollection of what occurred the evening of Hinds' murder. Newton testified, consistent with Rimpal, that they both entered the room separately, that Taylor was in the motel room with a pistol, and Hinds was on the floor. Newton also testified that he and Rimpal, along with Taylor, all cleaned up the room where Hinds was murdered, and that they all placed trash bags on Hinds body and transported the body to New Jersey where it was dumped in a wooded area.

14) Newton acknowledged that throughout his time in Delaware and Maryland he smoked a great deal of marijuana. Newton also testified that in prior interviews with law enforcement he was not truthful and also minimized his involvement in the murder of Hinds. The basis for his actions, he explained, was that he was afraid of the repercussions from back where he lived, because there was a motto, "snitches get stitches." For that reason, he was worried for the sake of himself and his family. As a result of the numerous lies and false statements to the police, Newton was charged with hindering prosecution in February 2010. Newton pled guilty to that

felony level offense. His sentencing was scheduled for the month after Taylor's trial, in February 2011.

15) Eric Briggs was a prison snitch who testified to statements made by Taylor while both were incarcerated in Harford County, Maryland. On January 19, 2011, before Briggs testified, Taylor's counsel filed a Motion to Exclude Taylor's statements to Briggs. After hearing oral arguments on the motion prior to Briggs' testimony, the trial judge denied Taylor's Motion to Exclude.

16) Briggs testified that Taylor told him that Taylor shot the victim three times in the head and then drove the body and dumped it in the woods in New Jersey. Briggs also claimed that Taylor told him that the victim was planning on taking over his drug business and had threatened harm to Taylor's mother. Briggs corroborated several facts concerning Taylor's drug operation, which Newton and Rimpal previously testified to. In his testimony, Briggs confirmed that in his July 20, 2009 interview he was told by law enforcement to find out more detailed incriminating statements from Taylor. Briggs also testified that the purpose of gaining more detailed statements from Taylor was to then report back to the police with the hope of receiving a "break."

17) Taylor's first argument is that the trial judge erred when he denied his motion for a mistrial due to the prejudicial statements of one of the State's key witnesses, Rimpal. The prosecutor questioned Rimpal about his reluctance to testify and to cooperate with the police. Rimpal admitted that he had not been wholly truthful in his initial statements to police. When the prosecutor asked him why, Rimpal replied, "I was afraid. I am scared right now, tell the truth." Rimpal went on to explain that he was afraid that his involvement in the aftermath of the murder might lead to his arrest. When the prosecutor asked whether he was afraid of anything else, defense counsel asked to speak with the prosecutor. Defense counsel and the prosecutor conversed briefly, and the prosecutor then asked, "Are you afraid of any repercussion from back where you live?" When Rimpal replied affirmatively, the prosecutor asked him to "please explain to the jury why." Rimpal answered, "Because on a couple of occasions I have been assaulted."

18) The prosecutor and defense counsel simultaneously asked to approach the bench. The prosecutor explained to the judge that the previous evening she had learned that Rimpal had been assaulted in his Brooklyn neighborhood on three occasions and warned of the consequences of being a "snitch." She also stated, however, that there was no evidence to prove that Taylor had personally initiated these attacks or warnings. Therefore, she had

cautioned Rimpal not to mention the attacks during his testimony, but rather to explain to the jury, in general terms, about the “no snitching” culture in which he lived.

19) Defense counsel agreed that the witness had not responded as both he and the prosecutor expected: “I thought . . . what the witness was going to say is that it is not good to be [] a snitch, there is a culture where you don’t talk about your people, don’t snitch on other people.” Defense counsel moved for a mistrial, arguing that the jury would conclude from Rimpal’s testimony that Taylor was somehow “behind this.”

20) The prosecutor argued that an instruction to the jury would be sufficient to cure any possible unfair prejudice to the defense. The trial judge agreed with the State’s argument. Taylor’s motion for a mistrial was denied and the jury was then instructed:

THE COURT: All right, [l]adies and gentlemen. Ladies and gentlemen, I have the following instruction. Listen carefully.

I have determined that the witness’s last answer which referred to assaults in New York is not admissible under the rules of evidence. There is no evidence that relates such incidents to this case in anyway. Therefore, I instruct you to disregard that last answer completely and not to allow it to affect your deliberations in anyway. All right, proceed.

21) The decision to grant or deny a mistrial is within the trial judge’s discretion, since the judge is in the best position to determine the

effect and prejudice caused by the alleged error.² The granting of a mistrial is appropriate only where there is a manifest necessity or the ends of justice would otherwise be defeated.³ The record supports the trial judge's determination that a mistrial was unnecessary. The Rimpal testimony at issue was a single sentence in a trial that lasted eleven days. The parties agreed the remark was unexpected.⁴ Under these circumstances, a curative instruction was a meaningful and practical alternative to a mistrial.⁵ We hold that there was no abuse of discretion in the manner in which the trial judge resolved this matter.

22) Taylor's second argument is that the trial judge committed legal error in refusing to suppress incriminating statements that he made to a cellmate while incarcerated on unrelated charges in Harford County, Maryland. In July 2009, Taylor was arrested on a Maryland violation of probation in Harford County. As a result of that arrest, Taylor was held in default of bail in the Harford County Correctional Institute. At that time, although a suspect, Taylor had not been formally arrested for the murder of Hinds.

² *Thompson v. State*, 399 A.2d 194, 199 (Del. 1979).

³ *Fanning v. Superior Court*, 320 A.2d 343, 345 (Del. 1974).

⁴ Defense counsel, in moving for a mistrial, stated that the motion was not based on prosecutorial misconduct: "[The prosecutor] did nothing wrong, she assured me that is not what he was going to say."

⁵ *Justice v. State*, 947 A.2d 1097, 1102 (Del. 2008).

23) During the time that Taylor was held at the Harford County Correctional Institute, he shared a cell with Briggs. Briggs contacted the prosecutor in Harford County advising that he had been speaking with Taylor and he had information relevant to the homicide of Hinds.

24) On July 20, 2009, Detective DiGregorio ("DiGregorio") of the New Jersey State Police, along with his partner, visited Briggs at the Harford County Detention Center. At that time, a statement was taken from Briggs. During the course of the statement, Briggs indicated that he had spoken with Taylor and that Taylor had made certain admissions to him regarding the murder of Hinds. Briggs also indicated during that interview, that Taylor had been visited by an attorney who was going to represent him regarding not only the violation of probation but also any charge that may result from the Delaware offenses. Briggs explained that Taylor had shown him a business card of the attorney who had visited Taylor at the correctional facility, and who was going to be representing Taylor on all matters going forward. In the course of the July 20, 2009 interview, Briggs was instructed by DiGregorio to return to the dorm where Taylor was located and attempt to find out more detailed incriminating statements from Taylor.

25) After the July 20, 2009 interview, at the request of DiGregorio, Briggs continued to have contact with Taylor and questioned him further

about the murder of Hinds. In response to these questions, Briggs allegedly secured more detailed incriminating admissions from Taylor as DiGregorio requested. On July 30, 2009, law enforcement interviewed Briggs a second time, regarding these more detailed admissions by Taylor. Taylor was arrested for the murder of Hinds on August 19, 2009.

26) At trial, Taylor moved to suppress the July 30 statement by Briggs. Taylor conceded that any statements he made to Briggs before the July 20 interview were admissible. Taylor argued, however, that on July 20, Briggs became a state agent. Therefore, Taylor argues, because Taylor had told Briggs that he was represented by a lawyer, and Briggs had so informed the police, the police were not permitted to question Taylor about the murder, either directly or through the agency of Briggs.

27) On appeal, as in the Superior Court, Taylor acknowledges that neither his Fifth nor Sixth Amendment rights were violated by the police use of Briggs as an informant after the July 20 interview. Although Taylor was a suspect in Hinds' murder, he had not yet been charged or arrested.⁶ Nor was Briggs required to give *Miranda*⁷ warnings.⁸

⁶ See *Massiah v. United States*, 377 U.S. 201 (1964); *Maine v. Moulton*, 474 U.S. 159 (1985).

⁷ *Miranda v. Arizona*, 384 U.S. 436 (1966).

⁸ *Illinois v. Perkins*, 496 U.S. 292 (1990).

28) Taylor argues, however, that Taylor's post-July 20 admissions to Briggs were inadmissible under the Delaware Constitution.⁹ In support of that argument, Taylor relies on this Court's decision in *Bryan v. State*.¹⁰

29) The trial judge denied Taylor's motion to suppress. The trial judge agreed with the parties that the Sixth Amendment was not implicated because, with regard to Hinds' murder, adversarial proceedings had not yet begun. The trial judge also agreed with the parties that Fifth Amendment rights had not attached either, since Taylor had not been charged with Hinds' murder. Lastly, the trial judge rejected Taylor's argument under the Delaware Constitution, and in so doing, found *Bryan v. State*,¹¹ to be distinguishable.

30) In *Bryan*, as the Superior Court observed, the defendant had already been arrested for the crime (murder) about which the police interrogated him. Therefore, in *Bryan*, the Fifth Amendment right to counsel had attached, and the issue was whether the defendant's waiver of *Miranda* rights was valid when police failed to inform the defendant that his attorney had just telephonically contacted the police and told them not to

⁹ Del. Const. art. I, § 7.

¹⁰ Taylor also relies upon *Jackson v. State*, 643 A.2d 1360 (Del. 1994). Our holding in *Jackson*, however, was based upon the Sixth Amendment and, therefore, does not support Taylor's argument under the Delaware Constitution.

¹¹ *Bryan v. State*, 571 A.2d 170 (Del. 1990).

question his client. This Court held that under Article I, section 7 of the Delaware Constitution, the police had erred in not informing Taylor of his attorney's call.¹²

31) In *Bryan*, we reaffirmed our prior holding in *Weber v. State*.¹³ Relying in part on Article I, section 7 of the Delaware Constitution, we held in *Weber* that:

To . . . effectuate the protection given to the accused by *Miranda*, and ensure that a suspect knowingly and intelligently waives his rights, we establish the following rule for the guidance of the trial court: if prior to or during custodial interrogation, and unknown to the suspect, a specifically retained or properly designated lawyer is actually present at the police station seeking an opportunity to render legal advice or assistance to the suspect, and the police intentionally or negligently fail to inform the suspect of that fact, then any statement obtained after the police themselves know of the attorney's efforts to assist the suspect, or any evidence derived from any such statement, is not admissible on any theory that the suspect intelligently and knowingly waived his right to remain silent and his right to counsel as established by *Miranda*.¹⁴

In *Bryan*, we noted that “Weber was decided in the context of a lawyer being present at a police station and attempting to render legal advice to his client.”¹⁵ We then held that “[f]or purposes of the protections afforded by the Delaware Constitution, there is no distinction between an in-person

¹² *Id.* at 177.

¹³ *Id.* at 174-77.

¹⁴ *Id.* at 175 (quoting *Weber v. State*, 457 A.2d 674, 686 (Del. 1983)).

¹⁵ *Id.*

request by retained counsel to render assistance to his client and a telephonic request by that lawyer.”¹⁶

32) Taylor had not yet been arrested for Hinds’ murder when he was speaking with Briggs. Since the investigation of Hinds’ murder was ongoing, the following holding from *Bryan* is particularly relevant to Taylor’s case:

Furthermore, when counsel has been specifically designated and retained to represent a suspect and the suspect has clearly made police aware of his desire to deal with police only through his counsel during the investigation leading to the arrest, we impose a heavy presumption against waiver if the lawyer is present and denied access to his client, or, as here, has repeatedly advised the police that no interrogations of the defendant were to occur.¹⁷

33) None of the critical facts that led to our holding in *Bryan* are present in Taylor’s case. The record does not reflect that Taylor specifically retained an attorney. Assuming arguendo that Taylor had retained an attorney, the record does not reflect that the attorney had ever been in contact with the police. *A fortiori*, the record does not reflect the police were “clearly made aware of [Taylor’s] desire to deal with police only through his counsel during the investigation leading to the arrest.”¹⁸ Accordingly, we hold that Taylor’s rights under the Delaware Constitution

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

were not violated under our holding in *Bryan v. State*.¹⁹ Therefore the Superior Court properly denied Taylor's motion to suppress his statements to Briggs after July 20.

NOW, THEREFORE, IT IS HEREBY ORDERED that the judgments of the Superior Court are affirmed.

BY THE COURT:

/s/ Randy J. Holland
Justice

¹⁹ *Id.*